REMARKS/ARGUMENTS

I. Summary

Applicants thank the Examiner for the telephonic interview of December 17, 2007. A summary of the interview is included below.

Claims 1-15 are pending in the application. In the final Office Action mailed November 29, 2007, claims 1-15 have been rejected.

The issues in the Office Action are:

- Claims 1-15 have been rejected under 35 U.S.C. § 102(e) as being anticipated by *Hellberg et al.* (WO 03/027275, hereinafter *Hellberg*);

- Claims 1-15 are rejected under 35 U.S.C. § 102(a) and (e) as anticipated by *Pershadsingh et al.* (U.S. Patent No. 6,316,465, hereinafter *Pershadsingh*);

- Claims 12 and 15 are rejected under 35 U.S.C. § 102(b) as being anticipated by *Kurtz et al.* (U.S. Patent No. 5,594,015, hereinafter *Kurtz*); and

- Claims 1-13 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatenable over claims 1-55 of copending U.S. Application No. 10/488,496.

Applicants have amended claims 1, 6, and 11. No new matter has been added. Claims 12-15 have been canceled without prejudice, and Applicants expressly reserve the right to file a continuation application directed to the subject matter of the canceled claims.

II. Applicant's Record Under § 713.04 of Telephone Interview With Examiner

Applicant respectfully submits the following record of the telephone interview of December 17, 2007, under M.P.E.P. § 713.04.

The following persons participated in the interview: Examiner Ruth A. Davis and Applicants' attorney Mark E. Flanigan. The claims were discussed in reference to the applied

art. Agreement was reached that claims 1, 6, and 11, further limited to the compounds GW-8510, purvalanol A, roscovitine, and combinations thereof, were allowable over the art of record. Agreement was not reached regarding claims 12-13; Applicant has canceled these claims, and claims 14-15 in the interest of expediting allowance and issue of remaining claims 1-11.

III. Claim Rejections under 35 U.S.C. § 102

Claims 1-15 have been rejected under 35 U.S.C. § 102 as being anticipated by *Hellberg*, separately by *Pershadsingh*. For a reference to be anticipatory, the identical invention must be shown in as complete detail as is contained in the claim. *See Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1566 (Fed. Cir. 1989).

Applicants have amended claims 1, 6, and 11 to recite the limitation of "and wherein said agent is GW-8510, purvalanol A, roscovitine, or a combination thereof." *Hellberg* does not disclose the compounds GW-8510, purvalanol A, or roscovitine. Thus, *Hellberg* does not disclose all limitations of claims 1, 6, and 11, and does not meet the standard set forth in *Richardson*.

Pershadsingh does not disclose the compounds GW-8510, purvalanol A, or roscovitine. Thus, *Pershadsingh* does not disclose all limitations of claims 1, 6, and 11, and does not meet the standard set forth in *Richardson*.

Claims 2-5 and 7-10 depend directly or indirectly from independent claims 1 and 6. As such, claims 2-5 and 7-10 comprise all limitations of the base claim from which they depend. As shown above, all limitations of claims 1 and 6 are not taught by the references of record. Accordingly, all limitations of claims 2-5 and 7-10 are not taught by the references of record.

Claims 12 and 15 have been rejected by *Kurtz*. Applicants have canceled claims 12-15 without prejudice, obviating the rejection of record.

In view of the above, Applicants respectfully assert that claims 1-11 are not anticipated by *Hellberg* or by *Pershadsingh*, and request that the Examiner withdraw the 35 U.S.C. § 102 rejection of record and pass claims 1-11 to allowance.

IV. Double-patenting Claim Rejections

Claims 1-15 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatenable over claims 1-55 of copending U.S. Application No. 10/488,496. A rejection based upon this type of nonstatutory double patenting is appropriate where:

(a) patent protection for the invention, fully disclosed in and covered by the claims of the reference, would be extended by the allowance of the claims filed in a later application;

(b) there was no valid excuse or mitigating circumstances making it either reasonable or equitable to make an exception (e.g., the Office required the restriction, or the claimed inventions were invented by different inventive entities); and

(c) no terminal disclaimer has been filed. *See* M.P.E.P. § 804, citing *In re Schneller*, 397 F.2d 350, 352 (CCPA 1968).

As noted above, Applicants have canceled claims 12-15 without prejudice. Claims 1-11 have been amended to recite the additional limitation of "and wherein said agent is GW-8510, purvalanol A, roscovitine, or a combination thereof." U.S. Application No. 10/488,496 does not disclose or claim the use of the compounds recited in amended claims 1-11. Since the present application and U.S. Patent No. 5,992,936 do not cover or claim the same subject matter, a non-statutory double patenting rejection is not appropriate for this reference. Applicants respectfully request that the Examiner withdraw the double patenting rejection of claims 1-15 and pass claims 1-11 to allowance.

V. Conclusions

For the reasons presented above, Applicants respectfully request that the Examiner withdraw the rejections of record and pass claims 1-11 to allowance. Applicants believe no further fees are due. However, if additional fees are due, please charge our Deposit Account No. 50-1051 in the name of Alcon, Inc.

Respectfully submitted,

December 19, 2007
Date

/Mark E. Flanigan, Reg. No. 51,681/
Mark E. Flanigan, Reg. No. 51,681
Phone No: (817) 615-5080

Address for Correspondence:

Mark E. Flanigan
IP Legal, Mail Code TB4-8
Alcon Research, Ltd.
6201 So. Freeway
Fort Worth, TX 76134-2099

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